

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
ALTERNATIVE DELIVERY PROVIDER RESELLER 1 CONTRACTS  
NEGOTIATED SERVICE AGREEMENTS

Docket No. MC2017-170

COMPETITIVE PRODUCT PRICES  
ALTERNATIVE DELIVERY PROVIDER RESELLER 1 CONTRACTS  
(MC2017-170)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2017-268

RESPONSES OF THE UNITED STATES POSTAL SERVICE  
TO CHAIRMAN'S INFORMATION REQUEST NO. 1,  
WITH PORTIONS FILED UNDER SEAL  
(August 30, 2017)

The United States Postal Service hereby provides its response to Chairman's Information Request No. 1, issued on August 24, 2017. Each question is reprinted verbatim in the attached and is followed by the Postal Service's response, portions of which are being filed under seal. The Postal Service incorporates by reference the application for non-public treatment it originally filed in this docket for protection of these materials, which contain confidential business information of the Postal Service and its delivery agent.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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August 30, 2017

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1. Please refer to the Request, Attachment 3 at 2. The draft MCS language for § 2510.14.1(a) states that the Reseller can resell Alternative Delivery Provider (ADP) contracts. ADP contracts are Negotiated Service Agreements (NSAs) between the Postal Service and a customer and are subject to Commission review. Please confirm that the Postal Service does not intend to permit the Reseller to enter into NSAs on the Postal Service's behalf. If confirmed, please provide alternative draft language for MCS §§ 2510.14.1(a) and 2510.14.3 that clarifies the nature of Alternative Delivery Provider Reseller (ADPR) contracts.

**RESPONSE:**

ADP 1 contracts between the Postal Service and a customer “allow[] customers to ship packages to specified destination countries using a combination of the Postal Service and Postal Service delivery agent(s).” MCS § 2510.13.1(a). In the Request in the instant docket, the Postal Service seeks permission to enter into contracts between the Postal Service and a customer that would “allow customers to resell [ADP] contracts, which allow the reseller’s customers to ship packages to specified destination countries using a combination of the Postal Service and Postal Service delivery agent(s).” MCS 2510.14.1(a). For ADPR 1, the contracts between the Postal Service and its customer — the reseller — would be NSAs and such NSAs would be filed with the Commission and meet the requirements of 39 U.S.C. § 3633. MCS § 2510.14.1. The Postal Service would not be a party to any contracts entered into by the reseller and the reseller’s customers. Such contracts would therefore not be filed with the Commission. This structure is similar to that of other reseller contracts already included in the MCS. See, e.g., MCS § 2510.6.1(c) (outlining Global Plus contracts with reseller option).

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The Postal Service includes as Attachment 1 to this ChIR Response a redlined version of the MCS proposal that clarifies the contractual relationships.

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2. Please refer to the Request, Attachment 4 at 1. Article 3(8) contains a redaction. Does the Postal Service object to filing an amended ADPR 1 Contract without this redaction? If the Postal Service does not object, please file an amended ADPR 1 Contract that removes this redaction. If the Postal Service does object, please: identify the specific statutory basis for the objection; justify the application of the statute to the contract provision; and explain the nature and extent of the commercial harm alleged to result from disclosure and the likelihood of such harm occurring. See 39 C.F.R. §§ 3007.21(c)(1), (4).

**RESPONSE:**

The Postal Service objects to the redacted information in Article 3(8) becoming public because if disclosed publicly, this information, coupled with other information that could be disclosed publicly, could reveal customer-identifying information. Such information is protected by 39 U.S.C. § 410(c)(2) coupled with 5 U.S.C. § 552(b)(3)). The justification for such protection is provided on pages 3-5, 8, and 10 of the Postal Service's Application for Nonpublic Treatment in this docket.

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3. Please refer to the Request, Attachment 4 at 1. Article 4 refers to the document titled USPS eGL Reseller Drop Shipment Requirements. Please confirm that this document is the same as the document that the Postal Service provided under seal in Docket Nos. MC2017-82 and CP2017-111.2. If not confirmed, please provide a copy of the document titled USPS eGL Reseller Drop Shipment Requirements.

**RESPONSE:**

Please see document filed under seal.

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4. Please refer to the Request, Attachment 4 at 2. Article 7(1) obligates the Postal Service to arrange with the supplier transportation to the destination country. If the Postal Service's contract with the supplier (Supplier Contract) were to end prior to the ADPR 1 Contract, meeting this obligation to the Reseller could result in the Postal Service incurring costs in excess of those shown in the financial workpapers submitted along with the Request. Please provide a copy of all relevant terms of the Supplier Contract that govern its termination.

**RESPONSE:**

The portions of the Supplier Contract that demonstrate that it shall be effective for a term longer than the term of the ADPR 1 Contract and show that termination is at only the Postal Service's — not the Supplier's — option are excerpted below:

Form 8203 (Schedule of Supplies / Services)

...

Period of Performance:

-Base Period of Performance 12/01/16 - 11/30/18

-Option Period 1: 12/01/18 - 11/30/20

- Option Period 2: 12/01/20 - 11/30/22

Exercising Options:

-In accordance with Clause 2-20: Option to Renew, this contract's options periods may be exercised, at the option of the USPS. USPS must provide a preliminary notice that it intends to exercise this option at least 30 days in advance of contract expiration.

-In accordance with Clause 2-19: Option to Extend, USPS may require the supplier to continue to perform any or all items of services under this contract for a period of up to 180 days at the option of the USPS. USPS must provide a notice that it intends to exercise this option by the at least 60 days in advance of contract expiration. The rates set forth in the Schedule will apply to any extension made under this option clause.

...

Terms & Conditions

...

**CLAUSE 2-19 OPTION TO EXTEND (SERVICES CONTRACT)(MARCH 2006)**

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The Postal Service may require the supplier to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. The rates set forth in the Schedule will apply to any extension made under this option clause.

...

**CLAUSE 2-20 OPTION TO RENEW (WITH PRELIMINARY NOTICE) (MARCH 2006)**

This contract is renewable, at the option of the Postal Service, by the contracting officer giving written notice of renewal to the supplier within the period specified in the Schedule; provided that, the contracting officer will have given preliminary notice of the Postal Service's intent to renew at least 60 days before this contract is to expire (such a preliminary notice will not be deemed to commit the Postal Service to renewals). If the Postal Service exercises this option for renewal, the contract as renewed includes this option clause. The duration of this contract, including renewals, may not exceed the time limit set forth in the Schedule.

...

**CLAUSE 4-1 GENERAL TERMS AND CONDITIONS (JULY 2007) (MODIFIED)**

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- I. Termination on Notice. The Postal Service may terminate this contract without cause at any time, in whole or in part, upon 120 calendar day's written notice to Supplier. Upon the Postal Service's exercise of a right to terminate this contract pursuant to this article, the Postal Service shall not be liable to the Supplier, for any fees, expenses, compensation or damages of any kind whatsoever, including, without limitation, loss of profit, expenditures, investments or commitments made in connection with the establishment, development or maintenance of the services performed hereunder. Such termination shall not prejudice the Supplier's respective rights to be paid for any services rendered or debts arising prior to the effective date of termination.
- m. Termination for Default. The Postal Service may terminate this contract, or any part hereof, for default by the supplier, or if the supplier fails to provide the Postal Service, upon request, with adequate assurances of future performance. In the event of termination for default, the Postal Service will not be liable to the supplier for any amount for supplies or services not accepted, and the supplier will be liable to the Postal Service for any and all rights and remedies provided by law. The debarment, suspension, or ineligibility of the supplier, its partners,



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officers, or principal owners under the Postal Service's procedures (see 39 CFR Part 601) may constitute an act of default under this contract, and such act will not be subject to notice and cure pursuant to any termination of default provision of this contract. If it is determined that the Postal Service improperly terminated this contract for default, such termination will be deemed a termination for convenience.

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5. Please refer to the Request, Attachment 4 at 4. Article 14 describes pricing updates in the event that the Postal Service incurs certain cost increases. Please confirm that the Postal Service's costs under the Supplier Contract are fixed for the duration of the ADPR 1 Contract. If not confirmed, please provide a copy of all relevant terms of the Supplier Contract that impact the Postal Service's costs under the ADPR 1 Contract.

**RESPONSE:**

The Supplier Contract is an Indefinite Delivery, Indefinite Quantity type contract, under which firm fixed prices apply to services per unit (piece or kilogram):

**This is a **single or multiple Indefinite Delivery/Indefinite Quantity (IDIQ)/Fixed-price per Kilogram (Kg) or Piece** type contract.**

Terms and Conditions, Clause B-3, Contract Type. These prices may increase per each respective two (2) year option period. See Question 4 response (Form 8203 excerpt). Certain cost increases also may occur if the Postal Service orders changes to the contract and the supplier is entitled to an equitable adjustment:

c. Changes

- (1) The contracting officer may, in writing, without notice to any sureties, order changes within the general scope of this contract in the following:
  - a) Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for the Postal Service in accordance with them;
  - b) Statement of work or description of services;
  - c) Method of shipment or packing;
  - d) Places of delivery of supplies or performance of services;
  - e) Delivery or performance schedule;
  - f) Postal Service furnished property or facilities.
- (2) Any other written or oral order (including direction, instruction,

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interpretation, or determination) from the contracting officer that causes a change will be treated as a change order under this paragraph, provided that the supplier gives the contracting officer written notice stating (a) the date, circumstances, and source of the order and (b) that the supplier regards the order as a change order.

- (3) If any such change affects the cost of performance or the delivery schedule, the contract will be modified to effect an equitable adjustment.
- (4) The supplier's claim for equitable adjustment must be asserted within 30 days of receiving a written change order. A later claim may be acted upon - but not after final payment under this contract - if the contracting officer decides that the facts justify such action.
- (5) Failure to agree to any adjustment is a dispute under Clause B-9, Claims and Disputes, which is incorporated into this contract by reference (see paragraph s). Nothing in that clause excuses the supplier from proceeding with the contract as changed.

See Terms and Conditions, Clause 4-1 on pages 16-17. Costs could also increase under certain circumstances pursuant to Clause 9-12, Fair Labor Standards Acts and Services Contract Act - Price Adjustments, which is incorporated by reference:

- (2) If checked, the following additional clauses are also incorporated in this contract by reference: (contracting officer will check as appropriate.)

. . .

- m) ☒ Clause 9-12, Fair Labor Standards Acts and Services Contract Act - Price Adjustments

See Terms and Conditions, Clause 4-2 on page 20.

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6. Please refer to the Request, Attachment 4 at 4. Article 14(4) limits price increases under that article to "the non-discounted published price for the affected service." In the case of ADPR, however, there are no published prices. Please confirm that this provision will not restrict the ability of the Postal Service to raise prices according to the other provisions of Article 14.

**RESPONSE:**

As noted, Article 14(4) is not applicable because there are no published rates for ADPR. To avoid any doubt, the Postal Service will present to the customer a modification removing Article 14(4).

**2510 Outbound International**

\* \* \*

**2510.2 Negotiated Service Agreement Groups**

- Global Expedited Package Services (GEPS) Contracts (2510.3)
- Global Bulk Economy (GBE) Contracts (2510.5)
- Global Plus Contracts (2510.6)
- Global Reseller Expedited Package Contracts (2510.7)
- Global Expedited Package Services (GEPS)—Non-Published Rates (2510.8)
- Priority Mail International Regional Rate Boxes—Non-Published Rates (2510.9)
- Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd. (2510.10)
- Priority Mail International Regional Rate Boxes (PMI RRB) Contracts (2510.11)
- Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (2510.12)
- Alternative Delivery Provider (ADP) Contracts (2510.13)
- Alternative Delivery Provider Reseller (ADPR) Contracts (2510.14)

\* \* \*

## **2510.14 Alternative Delivery Provider Reseller (ADPR) Contracts**

### **2510.14.1 Description**

- a. Alternative Delivery Provider Reseller (ADPR) Contracts allow customers to resell Alternative Delivery Provider (ADP) contracts, which allow the reseller's customers to ship packages to specified destination countries using a combination of the Postal Service and Postal Service delivery agent(s). ADP contracts resold by ADPR customers (i.e., resellers) are contracts between the reseller and the reseller's customers. Such contracts are not Negotiated Service Agreements to which the Postal Service is a party.
- b. Preparation requirements are as specified in the reseller's ADPR contract.
- c. Packages sent under ADPR Contracts may not contain letters unless subject to an exception or suspension as set forth in 39 CFR Parts 310 and 320.
- d. To qualify for an ADPR contract a reseller must be capable, on an annualized basis, of paying at least \$500,000.00 in international postage to the Postal Service.
- e. Individual negotiated agreements between the Postal Service and its customers must comply with the requirements specified in 39 U.S.C. § 3633.

### **2510.14.2 Size and Weight Limitations**

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>The surface area of the address side of the item must be large enough to completely contain the shipping label.</u>			<u>none</u>
<u>Maximum</u>	<u>46 inches</u>	<u>46 inches</u>	<u>35 inches</u>	<u>70 pounds</u>
	<u>108 inches in combined length and girth</u>			

### **2510.14.3 Minimum Volume or Revenue Requirements**

Shippers-Resellers must commit to tendering varying minimum volumes or postage of ADP contracts on an annualized basis.

2510.14.4 Price Categories

The following price categories are available for the product specified in this section:

- Pricing may vary based on origin, weight, destination, and other factors.

2510.14.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- None

2510.14.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- ADPR 1  
Baseline Reference  
Docket Nos. MC2017-170 and CP2017-268  
PRC Order No. TBD  
Included Agreements  
TBD